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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington D.C. 20554

JAN 19 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )  
)  
AT&T Corporation, VLT Co. L.L.C., Violet License )  
Co. LLC and TNV [Bahamas] Limited Seek FCC )  
Consent for Grant of Section 214 Authority, ) IB Docket No. 98-212  
Modification of Authorizations and Assignment of )  
Licenses in Connection With Proposed Joint Venture )  
Between AT&T Corporation and British )  
Telecommunications plc )

COMMENTS IN OPPOSITION OF GTE

GTE Service Corporation and its affiliated telecommunications companies<sup>1</sup> (collectively, "GTE") submit these comments in opposition to the proposed global joint venture of AT&T Corporation ("AT&T") and British Telecommunications plc ("BT").<sup>2</sup> The parties claim that this

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<sup>1</sup> GTE Alaska Incorporated, GTE Arkansas Incorporated, GTE California Incorporated, GTE Florida Incorporated, GTE Hawaiian Telephone Company Incorporated, The Micronesian Telecommunications Corporation, GTE Midwest Incorporated, GTE North Incorporated, GTE Northwest Incorporated, GTE South Incorporated, GTE Southwest Incorporated, Contel of Minnesota, Inc., GTE West Coast Incorporated, and Contel of the South, Inc., GTE Communications Corporation, GTE Wireless Incorporated, GTE Internetworking, and GTE Media Ventures Incorporated.

<sup>2</sup> GTE files these comments pursuant to the Commission's Public Notice, "AT&T Corporation, VLT Co. L.L.C., Violet License Co. L.L.C. and TNV [Bahamas] Limited Seek FCC Consent for Grant of Section 214 Authority, Modification of Authorizations and Assignment of Licenses in Connection with Proposed Joint Venture Between AT&T Corporation and British Telecommunications PLC," DA 98-2412 (rel. November 27, 1998). The comments pertain to issues raised by the applicable filings made pursuant to the Cable Landing License Act, 47 U.S.C. §§ 34-39 and Sections 214 and 310(d) of the Communications Act of 1934, 47 U.S.C. §§ 214 and 310(d), for (a) approval of grants of authority to VLT Co. L.L.C. ("VLT") and TNV [Bahamas] ("TNVT") to provide facilities-based and resale international common carrier services; (b) the modification of certain Section 214 authorizations held by AT&T or its subsidiaries to the extent necessary to assign to VLT ownership interests of AT&T in international cable facilities within United States territorial limits and to assign to TNVT the ownership interests of AT&T in international cable facilities outside of the U.S. territorial limits; (c) the assignment to VLT of submarine cable licenses held by AT&T or its subsidiaries; and (d)

global joint venture of “the two greatest brands standing shoulder to shoulder” will create a global system “unparalleled in capability and reach” which will “redefine how [multinational corporations] can operate and conduct business in the 21<sup>st</sup> century.”<sup>3</sup> What the joint venture will actually do is create a dominant entity in the rapidly emerging market for the provision of global converged voice/data telecommunications services, initially primarily to large multinational corporations (“MNCs”) and to other carriers. The likelihood of this occurring is greatly increased by AT&T/BT’s plan to create a new Internet Protocol-based network featuring proprietary Application Programming Interfaces.

The problem is further exacerbated by BT’s persistent monopoly over the United Kingdom telephone market and AT&T’s recent announcement of its planned acquisition of the IBM Global Network. Accordingly, under the public interest standard previously set forth by this Commission, this joint venture should not be approved because of the likelihood that it will result in substantial competitive harm not outweighed by any corresponding procompetitive justification.

## **I. INTRODUCTION AND SUMMARY**

### **A. AT&T and BT Propose to Create a Global Venture with Unparalleled Market Power**

The size and scope of the AT&T and BT global joint venture far exceeds the international presence of any other carrier or combination of telecommunications companies. AT&T on its own has annual revenues of \$51.3 billion<sup>4</sup> and still is the clear market leader in the U.S. long

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the assignment to Violet License Co. L.L.C. of earth station licenses held by AT&T or its subsidiaries.

<sup>3</sup> Speech by Sir Peter Bonfield, BT’s CEO, and AT&T/BT Global Venture Technology Background, July 26, 1998, both available at <http://att-bt-globalventure.com>.

<sup>4</sup> AT&T 1997 Annual Report, available at <http://www.att.com>.

distance market. BT has annual revenues of \$26.1 billion<sup>5</sup> and maintains monopoly control over Britain's local market. The two propose to contribute all of their international assets to the joint venture. This includes services and facilities covering 237 countries and territories, and network assets worth \$3 billion.<sup>6</sup>

In their first year of operation, the parties state they will have \$10 billion in revenues and 6,500 "international MNC and carrier accounts", <sup>7</sup> producing both a dominant combined share and overwhelmingly more MNC customers than any other carrier or alliance claims. These imposing figures do not count the IBM Global Network, whose purchase AT&T announced on December 8, 1998. This acquisition will add "several hundred large global companies [and] tens of thousands of mid-sized businesses", as well as a \$5 billion, 5-year contract, to the joint venture's base.<sup>8</sup> Nor do these figures take into account that other carriers, including KDD, Singapore Telecom and Telstra, according to numerous press reports, will participate in the alliance. AT&T/BT will achieve through their joint venture a dominant position, particularly among MNC customers, and that dominance will be reinforced through the combination of the above factors.

**B. How AT&T/BT Plan to Further Extend Their Dominance  
Among MNC Customers**

The parties plan to extend and entrench their initial dominant position among MNCs by creating a new Internet Protocol (IP)-based converged voice/data network, which will be adopted by the parents' domestic networks as well. This new IP network will connect 100 major

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<sup>5</sup> BT Annual Report & Accounts 1998, available at <http://bt.com/Report/fiveyr.html>.

<sup>6</sup> AT&T news release, July 26, 1998, available at <http://www.att.com/press/0798/980726.cha.html>.

<sup>7</sup> *Id.*

<sup>8</sup> AT&T press release, Dec. 8, 1998.

economic centers worldwide that generate well over 90 percent of the world's business telecommunications revenues.<sup>9</sup>

It is widely accepted in the telecommunications industry that networks of this type will predominate in the provision of global services in the near future, particularly to MNCs who initially are best placed to exploit the full benefits of this technology. In such an IP-based network, services are provided via applications software programs that are written using specific Application Programming Interfaces ("APIs") which allow the applications programs to interact with the network. APIs perform much the same function as the operating system software of a computer.

The parties claim that these APIs will be "open" so that any customer or software developer can create its own program on an API.<sup>10</sup> What they do not explain is that the APIs themselves will be proprietary to AT&T/BT and will be available only to AT&T/BT and its allies. All other carriers therefore will be largely excluded from the array of programs written by third parties for the dominant AT&T/BT system. What this Commission and antitrust authorities and regulators throughout the world should be concerned about is that AT&T and BT undoubtedly will use their early dominant position among MNC accounts and their proprietary APIs to take advantage of the network effects available in the telecommunications industry to create a vicious circle whereby their dominance becomes ever more complete and entrenched as more and more software, correspondingly used by more and more companies, is written to their propriety APIs. The end result, as in the personal computer industry, another industry where network effects are important, will be that the joint venturers will attain a monopoly position, with their rivals relegated to a fringe position.

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<sup>9</sup> AT&T/BT Joint Technical White paper, at 3, available at <http://att-bt-globalventure.com/technology/whitepaper.doc>.

<sup>10</sup> *Id.* at 6.

**C. Anticompetitive Effects of BT's Monopoly Position in the U.K. Market**

BT's monopoly position in the U.K. market and the parties' leading position on the U.S.-U.K. route exacerbate the problems that would be created by the joint venture. BT remains by far the dominant carrier in the United Kingdom, accounting for approximately 85 percent of local service, 75 percent of national service, and over 50 percent of U.K. international services. As AT&T itself put it: "BT continues to operate without effective competition in every sector of the market. . . ." <sup>11</sup>

BT's monopoly power in the United Kingdom will serve to enhance and further entrench the dominant position of the AT&T/BT global joint venture. Further, BT's U.K. dominance will allow the parties to leverage BT's U.K. position to other markets by engaging in a variety of price and non-price discriminatory actions intended to raise rivals' costs and degrade the quality of their service. <sup>12</sup>

**D. This Global Joint Venture Fails the Commission's Public Interest Test**

This Commission has long held that the public interest standard encompasses consideration of antitrust issues and a series of recent decisions has indicated how that analysis is to be conducted. <sup>13</sup> The Commission routinely has applied competitive analysis to joint ventures as well as to mergers. <sup>14</sup>

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<sup>11</sup> AT&T Comments, *Merger of MCI Communications Corporation and British Telecommunications plc*, Dkt. No. GN 96-245 (*BT/MCI II*), filed Jan. 24, 1997, at 3.

<sup>12</sup> AT&T's Comments in *BT/MCI II* detail the many possible anticompetitive actions.

<sup>13</sup> See, e.g., *Applications of NYNEX Corporation Transferor, and Bell Atlantic Corporation Transferee, For Consent to Transfer Control of NYNEX Corporation*, 12 FCC Rcd 19985 (1997); *Application of WorldCom, Inc. and MCI Communications Corporation for Transfer of Control of MCI Communications Corporation to WorldCom, Inc.*, CC Dkt. No. 97-211 (rel. Sept. 14, 1998).

<sup>14</sup> See *Sprint Corporation Petition for Declaratory Ruling Concerning Section 310(b)(4) and (d) and the Public Interest Requirements of the Communications Act of 1934, as amended*, 11 FCC Rcd 1850, 1855, 1866 (1995) (*Sprint Decision*); see also *Application of Consent to Assignment of Licenses and Transfer of Control of Certain Subsidiaries of GTE Corporation and*

Where a merger or joint venture involves a domestic and an international carrier, the Commission has held in its *BT/MCI II Order* that the public interest inquiry must consider the effect of the joint venture on international routes.<sup>15</sup> Further, the Commission noted that because the World Trade Organization Agreement was relatively new, “we must be especially careful at this time in evaluating mergers involving U.S. and foreign telecommunications carriers.”<sup>16</sup>

When such a careful evaluation is applied to this joint venture, which will create a dominant player in the market for global telecommunications services, it is clear the venture is contrary to the public interest.

## **II. THE AT&T/BT JOINT VENTURE INTENDS TO DOMINATE THE MARKET FOR THE PROVISION OF GLOBAL TELECOMMUNICATIONS SERVICES TO MULTINATIONAL CORPORATIONS**

AT&T and BT have proclaimed that through their global joint venture: “We are not only redefining the competitive landscape, more importantly, we are creating a customer network that will redefine how MNCs can operate and conduct business in the 21<sup>st</sup> century.”<sup>17</sup> This ambition, with its implication of market dominance, is well within the grasp of a combined AT&T/BT.

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*United Telecommunications Company to Sprint Communications Company*, 1986 FCC LEXIS 3223, ¶ 6 (1986); see also *American Satellite Corporation, Continental Telephone Corporation Fairchild Industries, Inc., Application for Authority to Assign Permits, Licenses, Certificates and Authorizations to a Partnership*, 80 F.C.C. 2d 254, 263 (1980).

<sup>15</sup> *Merger of MCI Communications Corporation and British Telecommunications plc*, 12 FCC Rcd 15351, 15353 (1997) (*BT/MCI II Order*).

<sup>16</sup> *Id.* at 15356.

<sup>17</sup> AT&T/BT Global Venture Technology Background, available at <http://att-bt-globalventure.com/>.

**A. Dominant Size and Unprecedented Scope of the Joint Venture**

The intended size and scope of this joint venture is unprecedented in the telephone industry, far outstripping any other international service offering, whether by an individual company or alliance. To begin with, both companies retain extremely strong positions in their home markets. AT&T remains the largest U.S. carrier and is the clear market leader in the long distance market with over 63 percent of pre-subscribed lines and over one-half of access minutes.<sup>18</sup> BT retains a dominant position in the United Kingdom with more than 85 percent of the local market, more than 75 percent of the intercity market, and more than 50 percent of international service.<sup>19</sup> In contrast, Cable & Wireless Communications, the second largest supplier of these services, accounts for only 6.3 percent of local services, 11.4 percent of national service, and 15 percent of U.K. international services.<sup>20</sup>

Second, the initial contribution by AT&T/BT of all of their international assets to the joint venture will give it unparalleled size. These assets include services and facilities covering 237 countries and territories; interconnection to over 400 carriers; 25 billion minutes; 200,000 private line circuits; more than 6,000 nodes in 52 countries from Concert's managed network, covering nearly 1,000 cities; undersea cable systems, cable stations and earth stations throughout the world; and customer service and network operations/management centers on four continents.<sup>21</sup> Overall, assets worth billions of dollars are being contributed to the joint venture.<sup>22</sup>

Third, the joint venture will begin its existence with a huge revenue and customer base. During its first year of operation, revenues are projected at \$10 - \$11 billion: \$3.5 billion from a

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<sup>18</sup> FCC, *Long Distance Market Shares Third Quarter 1998*, Tables 1.1 and 2.2.

<sup>19</sup> Office of Telecommunications of the United Kingdom, (OFTEL) Market Information Update, Nov. 1998.

<sup>20</sup> *Id.*

<sup>21</sup> AT&T/BT public release, available at <http://att-bt-globalventure.com/>.

<sup>22</sup> AT&T/BT, Global Venture Technology Background, *supra* note 17.

global voice and data business developing network-based solutions for MNCs, building on Concert; more than \$3 billion from MNCs in three targeted sectors: financial, petroleum and IT services, starting with 250 of the parents' largest MNC accounts; and \$4.5 billion from an international carrier service business.<sup>23</sup>

The joint venture will begin with 6,500 "international MNC and carrier accounts." Of these, approximately 400 are other carriers.<sup>24</sup> This 6,500 customer total, according to available data, constitutes both a dominant combined share and is overwhelmingly larger than the MNC total of any other carrier or alliance. The Cable & Wireless/Telecom Italia alliance (now apparently dissolved), for instance, had 1,400 such accounts and World Partners (soon to be dissolved) 750.<sup>25</sup> And AT&T's key partner in World Partners, Unisource, is now in disarray, as confirmed by the recent announcement that a major equity position in Unisource will be sold to a financial purchaser.<sup>26</sup> Global One, the Sprint, Deutsche Telekom, and France Telecom joint venture had 1997 revenues of only \$1.1 billion, one-tenth the total with which the AT&T/BT joint venture will begin.<sup>27</sup> Moreover, Global One, which has consistently lost money, is reported to have suffered a \$809 million loss for 1998 and is not expected to show a profit until 2002.<sup>28</sup>

The joint venture's customer base will also be augmented if AT&T is permitted to complete its acquisition of the IBM Global Network, whose customer base includes "several

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<sup>23</sup> AT&T/BT public release, available at <http://att-bt-globalventure.com/news/index.html>. While the parties speak of \$10 billion in revenues, the individual components add up to \$11 billion. The reason for the discrepancy is unclear.

<sup>24</sup> *Id.*

<sup>25</sup> Cable & Wireless press release, April 15, 1998, available at <http://www.cwplc.com/press/1998/p1998/p98apr14.htm>.

<sup>26</sup> Unisource press release, Nov. 4, 1998, available at <http://www.unisource.com>.

<sup>27</sup> *Kansas City Business Journal*, July 31, 1998, at 1.

<sup>28</sup> *AFX News*, Jan. 8, 1999.

hundred global companies” and an estimated 35,000 other business accounts.<sup>29</sup> The purchase includes a \$5 billion, 5-year contract -- “the single largest network outsourcing contract ever awarded” -- to provide “a significant portion of IBM’s own global networking needs.”<sup>30</sup> In addition, AT&T would acquire IBM’s relationship with Nippon Telegraph and Telephone, “one of the biggest subcontractors in putting together the IBM network.”<sup>31</sup> AT&T’s Chief Executive Officer, Michael Armstrong, has acknowledged that “there is no question that the relationship to the [IBM] network of N.T.T. will strengthen the relationship between AT&T & N.T.T.”<sup>32</sup>

Fourth, in addition to the relationship with N.T.T., according to numerous press accounts, several other carriers will participate in the joint venture. According to these reports, KDD of Japan has already informally agreed to join the alliance, Singapore Telecom has stated that it intends to continue working with AT&T and BT, and Telstra’s Chief Executive Officer has stated that AT&T and BT have “both sent signals that they want us to be significant partners in this alliance.”<sup>33</sup>

Thus, while precise figures are not available, the evidence which is public clearly indicates that AT&T/BT will begin their joint venture in a dominant position in the market for the provision of global telecommunications services market to MNCs.<sup>34</sup> There is no question but that the provision of such services to MNCs constitutes a market for purposes of competition

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<sup>29</sup> AT&T press release, Dec. 8, 1998.

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *New York Times*, Dec. 9, 1998, at C1.

<sup>33</sup> *InfoWorld*, August 3, 1998; *Comm. Daily*, July 28, 1998; *AFX News*, Nov. 18, 1998.

<sup>34</sup> GTE suggests that to the extent the Commission remains unsure of this conclusion, that it use its powers to gather the requisite information.

analysis. The Commission has found so on several occasions in recent years <sup>35</sup> and AT&T itself points out that “[m]ultinational enterprises have unique needs.”<sup>36</sup>

**B. AT&T/BT’s Control of Proprietary APIs will Enhance Its Dominant Position.**

(1) **Background.** It is a widespread view in the telecommunications industry that Internet Protocol (IP)-based converged data/voice networks will be the predominant method of providing global telecommunications services within the near future. A principal reason for this development is that IP-based networks can provide greater flexibility in the types of services offered than networks based on other technologies, and IP-based network technologies can achieve much greater efficiencies and capacities. In an IP-based network, services are provided via applications software programs that are written using specific APIs. The APIs permit the applications programs to interact with the network.

At the present time, many companies are working to develop APIs for IP-based telecommunications networks that will permit the integration of voice telephony, directory services, and direct control over quality of service. (The APIs we refer to here are those permitting such integration.) Many of these are computer and software companies rather than operators of telecommunications networks. In addition, third parties are already developing applications using these APIs.

In the absence of the AT&T/BT joint venture (and AT&T’s proposed acquisition of IBM’s Global Network business), there is every reason to believe that there will be intense competition at both the technology and carrier levels. At present, there is no single dominant provider of telecommunications services to MNCs. Absent the creation of a dominant firm,

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<sup>35</sup> See, e.g., *BT/MCI II Order*, at 15376; *Sprint Decision*, at 1864; *MCI Communications Corp. and British Telecommunications plc, Declaratory Ruling and Order*, 9 FCC Rcd 3960, 3971 n.98 (1994) (*BT/MCI I*).

<sup>36</sup> AT&T Comments, at 12.

others that presently are not competing in this market because of lack of network reach and other limitations -- including GTE -- likely would add to the existing competition.

There similarly is no dominant API technology for IP-based networks. Converged data/voice IP platforms are being developed, and the choice of technology remains open.

Absent the AT&T/BT joint venture, it is likely that there will be both price/service competition among carriers attempting to gain a stronger market position and technological competition among alternative technologies that will drive the new converged data/voice IP networks, and a burgeoning market place of third party applications developers. In that case, while standard APIs may ultimately evolve from the process of competition or industry-wide standards setting, that standard will be the product of competitive forces, not the artificial creation (and property of) an entity which begins the race in a dominant position.

(2) *AT&T/BT's Control of Proprietary APIs.* Beyond the dominance apparent from the size of the proposed joint venture alone, a critically important element of the AT&T/BT scheme is that AT&T/BT propose to maintain proprietary rights in, and thereby to control, APIs for IP-based converged data/voice telecommunications services. AT&T/BT have claimed that the APIs will be “open”, in the sense that AT&T/BT will make them available to software firms that want to write applications software compatible with the AT&T/BT APIs, and that AT&T/BT “distributors and other partners” will have access to the APIs.<sup>37</sup> However, AT&T/BT have made no similar commitment to develop interoperable APIs or even to make the APIs available to competing carriers. To the contrary, they have said that AT&T/BT “distributor and partner” access to the APIs will “give them a distinct competitive advantage.”<sup>38</sup> This statement makes little sense if carriers not allied with AT&T/BT will participate in the development of, or will have access to the APIs, and thus will be able to offer services available

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<sup>37</sup> AT&T/BT Joint Technical White paper, *supra* note 9, at 6.

<sup>38</sup> *Id.* at 4.

through software applications written over the AT&T/BT APIs. It follows that other carriers will *not* have such access and will *not* be able to offer such services.

(3) ***Positive Feedback Effects Resulting From Control of APIs.*** APIs function in much the same way as the operating system of a personal computer. Just as a PC operating system enables applications software to interface with and run on a PC, APIs will permit specific service-enabling applications software to interface with directory services, voice services, and an IP-based telecommunications network.

As the development of the PC industry has demonstrated, the existence of a large (actual or anticipated) base of customers using a specific operating system draws software developers to write applications that will run over that operating system. In turn, the existence of a rich array of applications compatible with a specific operating system draws additional customers to the operating system -- which encourages the creation of even more compatible applications software in the "positive feedback" effect normal to network markets. Markets with such "network effects" are particularly susceptible to "tipping", that is, the tendency for a system with even an initial edge on its rivals (contrasted with AT&T/BT's dominant position) to become an industry standard and thus achieve market dominance.<sup>39</sup>

(4) ***AT&T/BT's Customer Base Will Trigger Positive Feedback Effects.*** AT&T/BT's base of 6,500 international MNC and carrier customers alone is sufficient to drive this "positive feedback" effect in favor of the AT&T/BT proprietary APIs, thus further extending and entrenching the dominance of the AT&T/BT joint venture. The addition of IBM Global Network's additional substantial customer base will reinforce this effect, as will many other factors:

(a) As detailed above, BT remains the dominant carrier in the U.K., accounting for more than 85 percent of local service and more than 75 percent of intercity

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<sup>39</sup> For a survey, see M. L. Katz & C. Shapiro, *System Competition and Network Effects*, 8 J. ECON. PERSPECTIVES 93 (1994).

service, as well as more than 50 percent of international service. BT's U.K. dominance will be consolidated as the result of the transaction due to the disincentives for AT&T to compete aggressively in the U.K. through its existing AT&T operations, as well as the combination of its operations with ACC, a switch-based carrier with a 5.6 percent share of the U.K. business market for international calls<sup>40</sup> (recently acquired as part of the AT&T/Teleport transaction) and Telewest, the U.K.'s second largest cable operator which also has more than 900,000 telephone lines connected<sup>41</sup> (in which AT&T will acquire a 28 percent interest if the pending AT&T/TCI transaction is approved). According to AT&T/BT, the U.K. alone is headquarters to more than 13 percent of all multinational companies worldwide (defined as companies that do business in at least 4 countries in at least 2 continents).<sup>42</sup>

(b) AT&T retains the leading position in the US market, with roughly one-half of the long distance market. The U.S., according to the parties, is headquarters to more than 37 percent of all major multinational companies.<sup>43</sup>

(c) AT&T and BT are important competitors to one another, each enjoying strong brand and reputational advantages not available to their potential competitors, consistently ranking in third-party surveys as the two global leaders in user perception of both service and innovation.<sup>44</sup> In announcing the proposed joint venture, BT's Sir Peter Bonfield emphasized that AT&T and BT have "the two greatest brands in global telecommunications."<sup>45</sup>

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<sup>40</sup> OFTEL, Aug. 1998, Market Information Update, Table 13A.

<sup>41</sup> Tele-Communications, Inc. 10-K for year ending Dec. 31, 1997, I-22.

<sup>42</sup> See AT&T/BT's Global Venture Technology Background, *supra* note 17.

<sup>43</sup> *Id.*

<sup>44</sup> *Comm. Week Int'l*, August 10, 1998, available at <http://www.totaltele.com/cwi/207/207listing.html>.

<sup>45</sup> Bonfield speech, *supra* note 3.

(d) Many of the major global customers, in choosing their telecommunications supplier, effectively draw with them a group of other companies who need to communicate easily with the principal. For example, suppliers to a large manufacturing company are likely to adopt the same system as the manufacturer because of their need for reliable communications with that large customer.

(e) Approximately 400 of the 6,500 AT&T/BT joint venture customers are other carriers.<sup>46</sup> To the extent these carriers adopt the AT&T/BT APIs or applications built on them, the other carriers' customers will contribute further to AT&T/BT's effective customer base, which will fuel the predominance of the AT&T/BT APIs.

(f) A number of other important carriers already seem prepared to align with the AT&T/BT joint venture. As mentioned, AT&T will inherit IBM's relationship with N.T.T. and other carriers such as KDD, Singapore Telecom and Telstra are reported to plan to ally with AT&T/BT.

(g) The joint venture will have ready access to the large majority of multinational corporations. The United States, home to AT&T, has 37 percent of MNCs; the United Kingdom, home to BT, has 13 percent of MNCs; and Japan, home to two likely allies of the joint venture, has 16 percent of MNCs.<sup>47</sup> The three countries in combination are thus headquarters to nearly two-thirds of MNCs.

(h) As discussed below, the AT&T/BT joint venture also proposes to act as a clearinghouse for ISPs and other carriers for Voice over IP and other services. In addition to its other anticompetitive effects, this will enhance the likelihood that the customers of participating ISPs/carriers will adopt applications based on the AT&T/BT APIs, further enhancing the "positive feedback" that will consolidate AT&T/BT dominance.

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<sup>46</sup> AT&T/BT Global Venture Technology Background, *supra* note 17.

<sup>47</sup> *Id.*

### **C. The Anticompetitive Impact of the Joint Venture**

For the reasons described, the AT&T/BT venture will produce a dominant firm, whose dominance will be extended and entrenched. The effect will be control of converged telecommunications technology and pricing by AT&T/BT.

(1) *The Proposed Joint Venture Is Already Having Effects in the Marketplace.* The anticompetitive impact of the AT&T/BT joint venture will not await consummation of the transaction or the completion of the parties' IP-based network. It has already begun. AT&T has already released to applications writers at least one set of APIs, for the emerging service of Voice Over IP ("VOIP"). AT&T/BT have made it clear that they will "align their international operations, strategies and investments" even before the completion of regulatory review.<sup>48</sup> As part of this alignment, AT&T already has begun to offer Concert service in the United States. In addition, consistent with economic analysis of network industries, anticipation of the joint venture will affect the conduct of applications writers, customers and other carriers even before the joint venture is actually formed. One recent example is the report that BT and the Irish PTO, Telecom Eireann, will enter into a 25 million pound annual contract. The story quoted an Eireann source saying "Telecom Eireann needs to offer its business customer access to global networks. The BT-AT&T venture will provide that."<sup>49</sup>

(2) *AT&T/BT's Dominance Will Extend Beyond Large MNC Customers.* Large MNC customers will play a key role in the consolidation of AT&T/BT's dominant position, but the effects of the proposed merger will not be so limited, and instead will extend to a much broader group of business customers generally. For example, as already noted, many smaller business customers will need access to services provided through applications software written using AT&T/BT-controlled APIs in order to communicate effectively with

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<sup>48</sup> AT&T press release, Oct. 8, 1998.

<sup>49</sup> *Sunday Times*, Dec. 27, 1998.

larger MNC firms that are their customers or suppliers. AT&T/BT's control of the large MNC market will permit it to extend its dominance to smaller customers as well.

**D. AT&T/BT Will Also Achieve Dominance In The Market for APIs for IP-Based Telecommunications Networks**

In addition to enabling AT&T/BT to achieve a dominant position in the global MNC telecommunications services market, the combination would create a dominant firm in the market for the APIs used in IP-based telecommunications networks, which also is a relevant market for purposes of competition analysis.

As described above, access to AT&T/BT-controlled APIs will be necessary in order for other telecommunications service suppliers to be able to provide their customers with services available through applications software written using such APIs. Even if AT&T/BT were willing to provide competing carriers access to such APIs, they would be able to do so on terms substantially less favorable than would exist in a competitive market and at prices which would place their competitors at a financial disadvantage. While, in theory, competing telecommunications service suppliers could utilize alternative APIs, they would not do so even if AT&T/BT charged much higher prices/royalties than the prices/royalties charged for access to competing APIs because of the relatively large amount of applications software compatible with the AT&T/BT-controlled APIs. Thus, quite apart from its effect in the global converged telecommunications market the proposed joint venture would create a dominant firm in the market for APIs for IP-based converged data/voice networks.

**E. AT&T/BT's Additional Dominance Through Their Global Clearinghouse**

AT&T recently has announced that it will operate a global clearinghouse through which ISPs and carriers can arrange to provide VOIP service to more than 140 countries.<sup>50</sup> The Clearinghouse is intended to be included in the AT&T/BT joint venture upon formation.

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<sup>50</sup> AT&T press release, Oct. 8, 1998.

The AT&T/BT service likely will be very attractive to potential users, especially ISPs and non-international carriers, because (1) the Clearinghouse essentially is a “turn key” arrangement under which AT&T/BT will supply to participants the necessary back-office hardware and software systems to support Clearinghouse-provided provisioning, billing and settlement services needed for participants to offer services (such as VOIP) to their customers; and (2) it will provide immediate access to AT&T/BT’s wide-reaching network and customer base. In addition, while there are several other clearinghouses in early stages of operation in the US, none of them is operated by a major telecommunications carrier.

AT&T/BT’s control of this Clearinghouse could enhance their dominance and reduce competition in a number of ways.

- ISPs and carriers participating in the Clearinghouse will be “locked in” to AT&T/BT because of the integration of AT&T/BT hardware and software in their operations, thus giving AT&T/BT a predominant position in VOIP, which is widely recognized as a service that will be particularly important to MNC customers.
- Control of the settlement function would permit AT&T/BT to dictate which services may be offered, and which may not. AT&T/BT can defeat initiatives by competitors simply by “slow rolling” a provisioning and billing system for a proposed new service.
- ISPs and carriers participating in the Clearinghouse will be required to provide AT&T/BT with detailed information concerning routes, rates, and other competitively sensitive information. AT&T/BT’s access to this information from competing carriers will enable AT&T/BT readily to counter competitive initiatives by other carriers and create disincentives for those carriers to compete aggressively.

### **III. BT'S PERSISTENT MONOPOLY POWER IN THE U.K. MARKET ALLOWS IT TO DISCRIMINATE AND DISTORT COMPETITION IN THE U.S.**

There is no question but that BT retains a dominant position in the United Kingdom: it controls more than 85 percent of local traffic, more than 75 percent of intercity traffic and more than 50 percent of international traffic. As the Department of Justice Antitrust Division observed in its Memorandum on the abortive BT purchase of MCI: "BT maintains substantial market power in local and domestic long distance services in the United Kingdom . . . BT's position in these markets is unlikely to erode swiftly."<sup>51</sup> Or as AT&T told this Commission in the same matter:

". . . BT also continues to resist efforts to foster effective competition in its market. As a result, BT continues to have market power in the provision of all telecommunications services in the UK . . . ." <sup>52</sup>

In fact, AT&T maintained that despite progress "BT continues to operate without effective competition in every sector of the market and to possess market power in the provision of call termination to U.S. carriers."<sup>53</sup>

The joint venture will reinforce this dominance because AT&T will no longer have an incentive to compete against BT through its own existing AT&T operations (self-proclaimed as "the fastest growing communications company in the UK" which "is consistently surpassing its own targets for network traffic"),<sup>54</sup> its newly acquired ACC operation, or Telewest, of which AT&T will own 28 percent if the TCI acquisition is approved.

The lack of carrier pre-selection and dialing parity ("equal access") was cited by AT&T as "a significant barrier to effective competition" which "standing alone and irrespective of all

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<sup>51</sup> *United States v. MCI Communications Corp., et al.*, Memorandum of the United States in Support of Modification of the Final Judgment, Civ. Act. No. 94-1317 (D.D.C. filed July 7 1997), at 5-6.

<sup>52</sup> AT&T Comments, *supra* note 11, at (ii).

<sup>53</sup> *Id.* at 3.

<sup>54</sup> Available at <http://www.att.co.uk/aboutattuk>.

other reforms proposed, will adversely and significantly affect competition not only in the UK, but in the U.S.”<sup>55</sup> In *BT/MCI II*, this commission itself found that the lack of equal access in the United Kingdom would result in rates for “global seamless services” to be higher than they would otherwise be.<sup>56</sup>

AT&T now says that this issue is resolved because the United Kingdom has adopted regulations requiring BT to provide carrier pre-selection by 2000.<sup>57</sup> However, Ofel has issued a draft statement on recovering the costs of carrier pre-selection which proposes that carrier pre-selection be deferred to the end of December 2000 for national and international calls and to the end of 2001 or shortly thereafter for all other calls.<sup>58</sup> The UK has already made a formal request to the European Commission for a deferment of the introduction of carrier pre-selection until after the January 1, 2000 EU deadline.<sup>59</sup>

Thus, what AT&T once viewed as a uniquely significant barrier to competition seems likely to persist at least until 2001. And once removed, one can anticipate that it still will take time for substantial competition to develop.

Whatever the reason, it is plain that BT has a persistent entrenched dominant position in all sectors of the U.K. market. Just this week, OFTEL confirmed BT’s continuing market power, finding that “[n]o other single network operator can match BT in its ability to directly access

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<sup>55</sup> AT&T Comments, *supra* note 11, at (iii) and 6.

<sup>56</sup> *BT/MCI II Order*, *supra* note 15, at 15425.

<sup>57</sup> AT&T/BT Applications and Public Interest Statement in Support of the Global Venture of AT&T Corp. and British Telecommunications plc (filed Nov. 10, 1998), at 33.

<sup>58</sup> *Recovering the Costs of Carrier Pre-Selection*, Draft Statement Issued by the Director General of Telecommunications, Nov. 1998, at 4-5, available at <http://www.oftel.gov.uk/competition/cps 1198.htm>.

<sup>59</sup> *Id.*

customers anywhere in the UK.”<sup>60</sup> That stronghold will reinforce the market dominance of the AT&T/BT joint venture, as already described. But it will also allow BT to discriminate against rivals of the joint venture and increase their costs in a variety of ways. By way of example, it could provide the joint venture or AT&T with confidential, competitively sensitive information BT obtains from other telecommunications providers through its provision of UK services. Such activity was regarded as likely enough that both Justice Department proceedings involving BT/MCI prohibited it.<sup>61</sup>

BT will also benefit unfairly from a lower cost structure than its rivals because it will retain an artificially high share of high-margin out-going UK traffic due to the lack of equal access. In addition, BT retains market power over both UK cable landing stations and backhaul facilities and could use that power to favor the joint venture and AT&T at the expense of competitors. These are simply a few examples of the competitive harm which can be inflicted on U.S. carriers as a result of the combination of the joint venture and BT’s dominant position in the UK. Ironically, perhaps the most trenchant and persuasive analysis of potential anticompetitive acts by BT in favor of its U.S. partner was presented by AT&T not long ago in its Comments on the once-proposed BT acquisition of MCI.<sup>62</sup> And while AT&T argues to the contrary, little has changed in terms of BT’s position in the UK to change that analysis. The main difference is that BT’s new partner is AT&T, a company well over twice MCI’s size, and the potential competitive harm thereby is correspondingly larger.

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<sup>60</sup> OFTEL, *Determination that British Telecommunications plc has Interface Control with regard to new interface specifications relating to telephony services provided over the telephony and ISDN networks*, January 1999.

<sup>61</sup> *United States v. MCI Communications Corporation and BT Forty-Eight Company*, Civ. Act. No. 94-1317 (D.D.C. 1994); *United States v. MCI Communications Corporation and BT Forty-Eight Company*, Civ. Act. No. 94-1317 (D.D.C. 1997).

<sup>62</sup> AT&T Comments, *supra*, note 11.

#### **IV. CONCLUSION**

The likely effects of the proposed joint venture can be summarized as follows:

- (1) The merger of BT's and AT&T's international businesses will create a dominant carrier, far larger than any of its competitors, and will increase the parent companies' market power in their respective home countries.
- (2) Through their control of proprietary APIs, AT&T/BT will obtain dominance over the "operating system" of the next generation of telecommunications networks, which dominance it will extend and entrench, rendering to AT&T/BT significant control over the development of technology and pricing in emerging converged telecommunications markets.
- (3) The merger will reduce innovation by elimination of existing technology competition between AT&T and BT and, even more important, by creating barriers and disincentives to independent third-party development efforts in both APIs and applications.
- (4) Competition among service providers will be diminished through AT&T/BT control of the settlement process.

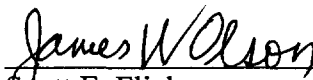
In sum, the joint venture will result in a host of anticompetitive outcomes not outweighed by any possible procompetitive benefits. Such a result would not be in the public interest and GTE respectfully requests that this Commission deny the applications and prevent this joint venture from being formed.

Respectfully submitted,

GTE Service Corporation and its  
Designated Affiliates

William P. Barr  
Richard W. Stimson  
Gail L. Polivy  
GTE SERVICE CORPORATION  
1850 M Street, N.W., Suite 1200  
Washington, D.C. 20036  
(202) 463-5214

Ward W. Wueste, Jr.  
John F. Raposa  
GTE SERVICE CORPORATION  
Westpoint Building  
1255 Corporate Drive  
SVC04C03  
Irving, Texas 75038  
(972) 507-5255

  
\_\_\_\_\_  
Scott E. Flick  
Mark C. Schechter  
James W. Olson  
Gregory F. Intoccia  
HOWREY & SIMON  
1299 Pennsylvania Avenue, N.W.  
Washington, DC 20004  
(202) 783-0800

Its Attorneys

January 19, 1999

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of January, 1999, I caused copies of the foregoing Comments in Opposition of GTE to be delivered by hand delivery to:

International Transcription Services, Inc.  
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Rick D. Bailey  
c/o AT&T Corporation  
1120 20<sup>th</sup> Street, N.W.  
Washington, DC 20036

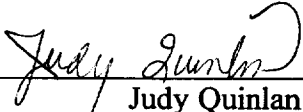
James E. Graf II  
Cheryl Lynn Schneider  
BT North America Inc.  
601 Pennsylvania Avenue, N.W.  
Suite 725, North Building  
Washington, DC 20004

Mark C. Rosenblum  
Lawrence J. Lafaro  
James J.R. Talbot  
AT&T Corporation  
295 Maple Avenue  
Basking Ridge, NJ 07920

Joel S. Winnik  
David L. Sieradzki  
Hogan & Hartson L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20005

Colin R. Green  
Tim Cowen  
British Telecommunications plc  
BT Centre A979  
81 Newgate Street  
London EC1 A7aJ  
England

David W. Carpenter  
Mark D. Schneider  
David L. Lawson  
James P. Young  
Sidley & Austin  
1722 Eye Street, N.W.  
Washington, DC 20006

  
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Judy Quinlan